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IN THE

Supreme Court of the United States

October Term, 1962

No. 97

LEROY HENRY, and 64 others,

Petitioners,

—v.—

CITY OF ROCK HILL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

JACK GREENBERG
CONSTANCE BAKER MOTLEY
MICHAEL MELTSNER
10 Columbus Circle
New York 19, N. Y.

MATTHEW J. PERRY
LINCOLN C. JENKINS, JR.
1107½ Washington Street
Columbia, South Carolina

DONALD JAMES SAMPSON
WILLIE T. SMITH, JR.
125½ Falls Street
Greenville, South Carolina

Attorneys for Petitioners

FRANK H. HEFFRON
GEORGE B. SMITH

of Counsel

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—v.—

CITY OF ROCK HILL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of South Carolina entered in the above entitled case on December 7, 1962, rehearing of which was denied on January 3, 1963.

Citation to Opinions Below

The opinion of the Supreme Court of South Carolina is reported at 128 S. E. 2d 775 and is set forth in the appendix hereto, *infra*, pp. 4a-6a. The Order of the York County Court is unreported and is set forth in the appendix hereto, *infra*, pp. 1a-3a.

Jurisdiction

The judgment of the Supreme Court of South Carolina was entered on December 7, 1962, *infra*, pp. 4a-6a. Petition for rehearing was denied by the Supreme Court of South Carolina on January 3, 1963, *infra*, p. 7a.

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1257(3), petitioners having asserted below and claiming here, deprivation of rights, privileges and immunities secured by the Constitution of the United States.

Questions Presented

1. Whether the arrests and convictions of the petitioners under South Carolina's vague common law concept of breach of the peace denied their rights of free expression secured by the Fourteenth Amendment where the facts are almost identical to those of *Edwards* v. *South Carolina* decided by this Court on February 25, 1963?

2. Whether petitioners were denied due process of law by their conviction for common law breach of the peace on a record devoid of evidence of any of the essential elements of the crime?

Constitutional Provision Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Statement

Petitioners, sixty-five Negro students, were arrested in two groups on March 15, 1960 in front of the City Hall of Rock Hill, South Carolina and charged with common law breach of the peace. The warrant (R. 2) stated that the petitioners "did willfully and unlawfully commit a breach of the peace by assembling with others in a large group upon the public streets, singing in a loud, boisterous, and

tumultuous manner and refusing to disperse upon order of a police officer contrary to the peace and dignity of the State of South Carolina, and in violation of the ordinances of the City of Rock Hill."

Petitioner Henry was tried and convicted on March 24, 1960. The other petitioners appeared in several groups in the Recorder's Court of the City of Rock Hill on March 31st, 1960, April 7th, April 14th, April 21st, April 28th, 1960, May 5th and May 26th, 1960 (R. 1). Upon the appearance of each group it was stipulated that the testimony in the trial of Leroy Henry was applicable to and incorporated by reference into the remaining trials (R. 1, 192). All of the petitioners were found guilty and sentenced to pay fines of thirty-five to forty-five dollars or to serve thirty days in prison (R. 1).

The cases were heard on appeal to the York County Court by the Honorable George T. Gregory, Jr. On December 29, 1961, Judge Gregory issued an Order affirming the convictions (R. 193).

On December 7, 1962 the Supreme Court of South Carolina affirmed the convictions. Rehearing was denied on January 3, 1963.

A. The First Group

On March 15, 1960 around 1:00 P. M. (R. 40, 118) sixty Negro students gathered near the curb (R. 126) in front of the City Hall of Rock Hill, South Carolina to protest against racial segregation (R. 115, 150, 151, 192). They sang several songs—The National Anthem, My Country 'Tis of Thee, God Bless America, What a Friend We Have in Jesus, and America The Beautiful (R. 20, 91, 113). Some of the petitioners carried signs (R. 44). After approximately 15 minutes a police officer asked the leader of the group to

tell the students to disperse (R. 95). When they did not, he arrested them (R. 95).

The arresting officer, Lt. J. B. Brown, testified that he arrested petitioners "in view of the public peace," and because there was immediate danger to the public peace (R. 92).

The arresting officer testified that the petitioners were singing in a "loud tone of voice" (R. 91). Another officer said that they sang in a "loud, boisterous manner" (R. 20). But the singing was described by the defendant's witnesses as "very moderate" in tone (R. 145), low in volume (R. 147), and "in a very sweet, soft voice" (R. 166).

A car horn which was blowing could be heard distinctly above the singing (R. 125) which seemingly grew louder because of the horn (R. 92, 107). No complaints were made about the singing or any other of petitioners' actions, by persons within the City Hall or onlookers (R. 64, 65).

There was no evidence that the petitioners' conduct or the onlookers' threatened the public peace. While there was testimony that work was disrupted by the singing (R. 41, 62, 119), no complaint about this was made (R. 64, 65). Petitioners were not profane, insulting, discourteous, or anything of the kind (R. 63). The white onlookers "were just standing there to see what was going to happen" (R. 71). Five policemen were at the scene, and there is no evidence that more were called for or needed to control the situation (R. 108, 109).

No white persons were arrested nor was any attempt made to arrest any, even though some were blowing horns and others did not disperse when ordered to (R. 68, 71, 106, 107, 109, 110).

Petitioners were on the sidewalk in front of City Hall and did not prevent anyone from passing (R. 20, 41, 55, 57, 126). Nor did they block vehicular traffic (R. 126). The white onlookers on the other side of the street did not block traffic or pedestrians (R. 66). When some of the onlookers spilled out onto the street they were moved back with no trouble (R. 66, 67, 68). One of the state's witnesses who testified that cars could not pass (R. 120), testified that the students did not block traffic (R. 126). Nor were persons prevented from using parking meters (R. 56). Traffic was cut out of Hampton Street which is located in front of City Hall only around the time the arrests were made (R. 67).

B. The Second Group

The second group consisted of five persons who apparently arrived after the others had been arrested. They acted in much the same manner as the first group, singing patriotic and religious songs (R. 43, 96), but apparently for less time than the first group. Police asked them to leave and when they refused, they were arrested; at this time the street was fairly clear of citizens (R. 96).

No ordinance requires a permit to sing in front of City Hall (R. 83).

How the Federal Questions Were Raised and Decided Below

Before the commencement of the trial defendants made a motion to quash the information and dismiss the warrants on the ground that they were vague, indefinite, and uncertain (R. 6, 7). The motion was denied (R. 8, 18, 19).

At the close of the prosecution's case, a motion to dismiss the warrants was made on the grounds that the Four-

teenth Amendment had been violated in that there was no evidence showing a breach of the peace by the defendants (R. 141), and that the defendants were asserting rights of freedom of speech and assembly. The motion was overruled (R. 143).

At the close of the defendant's case, defendant renewed his motion to dismiss on grounds previously given (R. 188). The motion was overruled (R. 189).

After the verdict defendants moved for a new trial based on all the objections raised during the course of the proceedings (R. 189). The motion was overruled (R. 189).

In affirming the convictions, the York County Court, relied on *Edwards* v. *South Carolina* (R. 194), 123 S. E. 2d 247, reversed, 31 U. S. L. Week 4225, and stated that all the legal objections had been properly overruled.

In their appeal to the South Carolina Supreme Court defendants in the following exceptions contended that the Fourteenth Amendment had been violated because of the vagueness of the charge, the right of freedom of expression and the lack of any evidence to convict (R. 196):

> 1. "The Court erred in refusing to hold that the warrants are vague, indefinite and uncertain and do not plainly and substantially set forth the offense charged, thus failing to provide appellants with sufficient information to meet the charge against them as is required by Article I, Section 16, Constitution of the State of South Carolina and in violation of appellants' rights to due process of law, secured by the Fourteenth Amendment to the United States Constitution."
>
> * * * * *
>
> 6. "The Court erred in refusing to hold that appellants were convicted upon a record devoid of any evidence of the commission of any of the essential elements of

the crime charged, in violation of appellants' rights to due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution, and by Article I, Section 5, Constitution of the State of South Carolina."

* * * * *

8. "The Court erred in refusing to hold that the evidence shows conclusively that by the arrest and conviction of appellants the State of South Carolina used its police powers to deprive appellants of the right of freedom of assembly and the right of freedom of speech, guaranteed them by the First Amendment to the United States Constitution, and further secured to them under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States."

The South Carolina Supreme Court held that there was ample evidence to support the conclusion that the police acted in good faith, dismissed all the exceptions and affirmed the convictions, *infra,* p. 6a.

REASONS FOR GRANTING THE WRIT

I.

Edwards v. _South Carolina_ Requires Reversal Since the Facts Here Are Almost Identical to Those of That Case, Petitioners Having Been Convicted of South Carolina's Vague Crime of Common Law Breach of the Peace While Asserting Rights of Free Speech and Assembly Secured by the Fourteenth Amendment.

In *Edwards* v. *South Carolina*, 31 U. S. L. Week 4225, decided February 25, 1963, this Court decided that the arrest and conviction of Negro students under South Carolina's vague concept of breach of the peace, while they were peacefully protesting against racial segregation, violated their rights of freedom of expression and petition for redress of grievances secured by the Fourteenth Amendment. In this case, decided by the Supreme Court of South Carolina on December 7, 1962, subsequent to that court's decision in *Edwards* and before this Court's decision reversing it, Negro students also assembled to protest against racial segregation (R. 115, 150, 151, 192), this time in front of the City Hall of Rock Hill, South Carolina. Review of the facts and circumstances in each case demonstrates that the arrests and convictions of the students here were, if anything, even more unjustifiable than those in *Edwards*.[1]

One hundred eighty-seven persons assembled in *Edwards*; sixty-five were present here. The Negro students in *Edwards* registered their protest by marching, singing, and carrying placards. The two groups arrested here limited themselves to singing and carrying placards (R. 20, 44, 91, 113). While the students in *Edwards* demonstrated forty-five minutes to an hour, the first group here dem-

[1] The following references to *Edwards* are taken from the opinion of the court, 31 U. S. L. Week 4225 and 4226.

onstrated fifteen to thirty minutes, and the second group for a shorter period (R. 44, 95). Nor was there any clapping of hands, stamping of feet, or "religious harangue" like that found in *Edwards*.

In both cases the crowd could only be described as curious. In *Edwards* the onlookers numbered two hundred to three hundred persons while here there were one hundred and fifty "at the greatest gathering" when the first group was singing (R. 66). When the second group was arrested, "the street was fairly clear as far as citizens were concerned . . ." (R. 96). There was testimony in *Edwards* by the city manager that "possible troublemakers" were present in the crowd, but similar evidence is lacking here. Police officers were at the scene and in control in both cases, thirty being present in *Edwards*, five or six here (R. 108, 109).

No disruption of traffic can be found in either case. Even the slowing down of traffic which occurred in *Edwards* is missing here.

What was said by this Court in *Edwards*, 31 U. S. L. Week 4227 is equally true here,

> "It has long been established that these First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. *Gitlow* v. *New York*, 268 U. S. 652; *Whitney* v. *California*, 274 U. S. 357; *Stromberg* v. *California*, 283 U. S. 359; *DeJonge* v. *Oregon*, 299 U. S. 353; *Cantwell* v. *Connecticut*, 310 U. S. 296. The circumstances in this case reflect an exercise of these basic constitutional rights in their most pristine and classic form."

Moreover if singing before the City Hall of Rock Hill in protest against racial segregation is enough to arrest and

convict these petitioners, South Carolina's use of common law breach of the peace is subject to the vice of vagueness. No ordinance or statute prevented petitioners from singing in front of City Hall (*R.* 83). Thus this Court is not asked to review "criminal convictions resulting from the even-handed application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed." *Edwards* v. *South Carolina*, 31 U. S. L. Week at 4227. The South Carolina Supreme Court in this case defined breach of the peace, as it did in *Edwards*, in this way (*infra*, p. 5a):

> "'In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence . . ., it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense . . .'"

This Court rejected such a vague definition as insufficient to convict persons engaged in the exercise of rights of freedom of speech and expression holding:

> "These petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, 'not susceptible of exact definition.' And they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd

and necessitate police protection." *Edwards* v. *South* Carolina, 31 U. S. L. Week 4227.

Certiorari should be granted because the opinion of the Supreme Court of South Carolina is in direct conflict with this Court's decision in *Edwards*. These petitioners, like those in *Edwards*, were asserting rights of free expression which South Carolina has abridged by means of a crime so vaguely defined as to be repugnant to the Fourteenth Amendment.[2]

II.

The Convictions of the Petitioners for Breach of Peace Violate the Due Process Clause of the Fourteenth Amendment in That They Rest on No Evidence of Public Disorder, Disturbance, or Violence, Actual or Threatened.

Even under South Carolina's amorphous definition of breach of the peace there is no evidence to support the petitioners' convictions. The testimony of the police was that petitioners were well mannered (R. 63). The onlookers made no move actual or threatened which suggested that they were hostile to the petitioners. They made no complaints (R. 64, 65). They "were just standing there to see what was going to happen" (R. 71). Moreover, none were arrested by the police (R. 68, 71, 109, 110). The situation was so controlled that only five policemen were at the scene and no more were called to control the students and the crowd (R. 108, 109).

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[2] Moreover, petitioners respectfully submit that since the legal and factual issues here are essentially the same as those found in *Fields* v. *South Carolina*, 31 U.S.L. Week 3297, decided on March 18, 1963, the same disposition made in that case should be made in this.

There was no disruption of traffic since it was able to move freely both on the sidewalk and in the streets (R. 41, 55, 56, 57, 66, 67, 68, 126). One street was blocked off only around the time the arrests were made (R. 67). There is testimony that some of the drivers blew their horns (R. 92, 106, 107, 125). But the arresting officer stated that this lasted only a matter of seconds (R. 111), nor were any arrests made of persons blowing horns (R. 109).

There was testimony of police officers and a city employee who helped take petitioners to jail that the singing was loud and work was disrupted (R. 20, 21, 62, 91, 119, 125). But the singing was not loud enough nor work disrupted enough to cause any complaints to be made (R. 64, 65). The onlookers, both on the sidewalk and in the buildings, can only be termed willing listeners. Even the testimony of the police was that petitioners were orderly, courteous, and polite (R. 63).

Certiorari should be granted and the decision below reversed for the additional reason that due process of law secured by the Fourteenth Amendment was denied in that there was no evidence to sustain the convictions. *Thompson* v. *Louisville*, 362 U. S. 199, *Garner* v. *Louisiana*, 368 U. S. 157, *Taylor* v. *Louisiana*, 370 U. S. 154.

CONCLUSION

Wherefore, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

JACK GREENBERG
CONSTANCE BAKER MOTLEY
MICHAEL MELTSNER
10 Columbus Circle
New York 19, N. Y.

MATTHEW J. PERRY
LINCOLN C. JENKINS, JR.
1107½ Washington Street
Columbia, South Carolina

DONALD JAMES SAMPSON
WILLIE T. SMITH, JR
125½ Falls Street
Greenville, South Carolina

Attorneys for Petitioners

FRANK H. HEFFRON
GEORGE B. SMITH

of Counsel

APPENDIX

IN THE

YORK COUNTY COURT

THE CITY OF ROCK HILL

—v.—

LEROY HENRY, *et al.*

Order

This Court now has before it for consideration a total of seventy-one cases which were heard by the Recorder's Court for the City of Rock Hill. The convictions of all defendants were in due time appealed to this Court and heard together by this Court on an agreed Transcript of Record. By occurrence and charge the cases are grouped as follows:

1. Sixty-five breach of peace charges, upon the public streets at City Hall, on March 15, 1960.

2. Three breach of peace charges, upon the public streets at Tollison-Neal Drug Store, on February 23, 1961.

3. One Trespass charge within McCrory's variety store, on April 1, 1960, before enactment of the 1960 Trespass Act (No. 743).

4. Two Trespass charges, within McCrory's variety store on June 7, 1960, after enactment of the 1960 Trespass Act.

An examination of the Transcript of Record on Appeal discloses no real distinction between the first sixty breach of peace cases at City Hall, the next five on the same day at the same place only a short time later, and the three breach of peace cases on the public streets at Tollison-Neal Drug Store. In all of these cases it appears from the record that the public peace was endangered, that the defendants were properly forewarned by a police officer to cease and desist from further demonstrations at that time and place, and move on, which they failed and refused to do, despite allowance of ample time within which to have complied with the order, and that thereafter they were arrested and charged with breach of peace as continuance of their activities under the circumstances then existing, as shown by the record, constituted open defiance of proper and reasonable orders of a police officer and tended with sufficient directness to breach the public peace.

The offense charged in each of the sixty-eight breach of peace cases is clearly made out under the facts shown by the Transcript of Record and the law of force in this state, particularly as the law is shown by the recent decision of the South Carolina Supreme Court in the case of *State* v. *Edwards et al.*, Opinion No. 17853, filed December 5, 1961.

In like manner this Court finds no distinguishing features between the one trespass case, which occurred at one time and place and the two later trespass cases at the same place. In all three cases each defendant was asked to leave the premises by the Manager of the store, this occurred in the presence of a City police officer, who then himself requested each defendant to leave and explained that arrest would follow upon failure to leave. After each defendant failed to leave the private premises involved, following allowance of a reasonable opportunity after request so to do, first by the Manager and then by the police officer, each defendant was arrested and charged with trespass. Here again, under the facts disclosed in the record

and the law of force in this state, the charge of trespass is properly made out as to each defendant. See *City of Greenville* v. *Peterson et al.*, S. C. Supreme Court Opinion No. 17845, filed November 10, 1961 and *City of Charleston* v. *Mitchell et al.*, S. C. Supreme Court Opinion No. 17856, filed December 13, 1961.

A number of specific legal questions were raised by the Defendants, including particularly a question as to adequacy and sufficient (sic) of the warrants and whether or not the Defendants were properly advised of the charges pending against them. An examination of the warrants discloses that in each case the facts constituting the offense charged were stated with reasonable and sufficient particularity. It is the opinion of this Court that the various legal objections raised in the court below, which are not set forth in detail herein, were properly overruled. See *State* v. *Randolph et al.*, 239 S. C. 79, 121 S. E. (2d) 349, filed August 23, 1961, other authorities cited herein, and other applicable decisions of our Courts referred to in the cited authorities.

Accordingly, it is hereby *ordered and decreed* that the convictions by the Recorder's Court of the City of Rock Hill in all of the seventy-one cases under appeal are hereby affirmed, and each of the cases is remanded for execution of sentence as originally imposed.

This Court takes note, from published reports, of the untimely death of the defendant, Rev. C. A. Ivory, since hearing of the appeals herein and before rendering judgment thereon.

All of which is duly ordered.

GEORGE T. GREGORY, JR.,
Residing Judge,
Sixth Judicial Circuit.

Chester, S. C.
December 29, 1961.

Opinion of the Supreme Court of South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE CITY OF ROCK HILL,

Respondent,

—v.—

LEROY HENRY, *et al.*,

Appellants.

Appeal from York County. GEORGE T. GREGORY, JR., *Residing Judge, Sixth Judicial Circuit.* AFFIRMED.

TAYLOR, *C.J.:* Appellants here are sixty-five Negroes who were arrested March 15, 1960, and convicted by the City of Rock Hill, South Carolina, of the common law offense of breach of peace.

The record reveals that on the day in question all of those arrested were engaged in singing patriotic and religious songs in a loud and boisterous manner in the city of Rock Hill; that the crowd assumed such proportions that it spread from the sidewalk into the street; that tension was present in the community resulting from previous demonstrations and threats of bombings had been made; that the singing was done in such loud and boisterous manner that work in the City Hall was completely disrupted. This demonstration had been going on from 25 to 30 minutes before they were forewarned by police officers to desist from further demonstrations. They failed and refused to comply with the request of the police and were arrested and charged with breach of peace.

"In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence • • •, it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense • • •.

"By 'peace', as used in the law in this connection, is meant the tranquility enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society." 8 Am. Jur. 834, Section 3; *State* v. *Edwards,* 239 S. C. 339, 123 S. E. (2d) 247. See also *State* v. *Brown,* —— S. C. ——, 126 S. E. (2d) 1; *City of Sumter* v. *McAllister,* —— S. C. ——, 128 S. E. (2d) 419, filed November 28, 1962; *City of Sumter* v. *Lewis,* —— S. C. ——, 128 S. E. (2d) 684, filed December 1, 1962.

Appellants in their brief contend principally that they were discriminated against because they were Negroes; second, that there was no breach of peace in that what they were doing was not within itself unlawful.

Appellants were not convicted under a statute designed to perpetuate segregation but were convicted of the common law offense of breach of peace, and this applies to any person irrespective of race. The singing of patriotic songs and religious hymns is, of course, not unlawful if done in a lawful manner, but even such praiseworthy acts may be done at a time and place and in such manner as

to be unjustifiable and unlawful resulting in a breach of the peace. There is ample evidence here to support the conclusion that the police acted in good faith to maintain the public peace, to assure the availability of the streets for their primary purpose of usage by the public, and to maintain order in the community.

For the foregoing reasons, we are of opinion that all exceptions should be dismissed; and IT IS SO ORDERED. JUDGMENT AFFIRMED.

MOSS, LEWIS and BRAILSFORD, *JJ.*, concur. BUSSEY, *A.J.*, did not participate.

Order of Denial of Rehearing

IN THE

SUPREME COURT OF SOUTH CAROLINA

CITY OF ROCK HILL,

Respondent,

—v.—

LEROY HENRY, *et al.*,

Appellants.

(Endorsed on Back of Petition for Rehearing)

None of the matters referred to in this petition were either overlooked or misapprehended.

The petition is therefore denied.

C. A. TAYLOR, *C.J.*
JOSEPH R. MOSS, *A.J.*
J. WOODROW LEWIS, *A.J.*
J. M. BRAILSFORD, *A.J.*